IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3569 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIRUBEN WD/O MANHAR @ GHANSHAMGOKULDAS NAYKA

Versus

DISTRICT MAGISTRATE

Appearance:

MR KK TRIVEDI for the Petitioner.

Ms.Archana Raval, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner, a lady, has challenged her detention order dated 8.1.2004. By the impugned order, the petitioner-detenue is detained as

a 'bootlegger', under the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). Along with the detention order, the petitioner-detenue was also served with the grounds of detention. In the grounds of detention, there is a reference about four registered criminal cases against the petitioner. All these cases are filed against the petitioner under the Bombay Prohibition Act before the Olpad Police Station. The said cases have been registered against the petitioner for violation of the Bombay Prohibition Act.

The authority, on the basis of the aforesaid registered cases, detained the petitioner under PASA. It is the aforesaid order which is impugned in this petition.

The learned Advocate for the petitioner has submitted that he is giving up the allegations which have been made in the petition against the police authorities. He submitted that he is restricting the arguments only to the ground that the subjective satisfaction arrived at by the authority under Section 9(2) of the PASA is vitiated.

The learned Advocate for the petitioner submitted that, in the instant case, resort to preventive detention is not justified, as, four individual cases under the Bombay Prohibition Act have been registered against the petitioner and the learned Advocate submitted that the said cases by themselves cannot be said to be a material for the purpose of holding that the appellant's activities had become a threat to the public order and public health. Necessary material in this regard is totally wanting in the body of the detention order itself. At the most, it can be said that the activities of the petitioner are in breach of law and order. It is further submitted that the Authority has not recorded statements of any of the witnesses and the petitioner is detained only in view of the registered criminal cases. The learned Advocate for the petitioner submitted that, in the detention order, there is no reference at all about breach of public order alleged to have been committed by the petitioner.

In the impugned order, there is no mention about breach of public order. Since the petitioner is dealing in country liquor, the authority has found that it can affect public health. At this stage, reference is required to be made to the decision of the Division Bench of this Court in L.P.A. No.223 of 2000, wherein this Court has held as under in paragraph 5 :-

" ... ...

5. If we examine the present case on the anvil of the test which has been applied by the Supreme Court in the case of K.S.Zala v. State of Gujarat (Supra), i.e. with regard to the presence of credible material and as to how the detaining authority has made the mention against the appellant being an obstruction to the public health and public order, we find that in the instant case so far as the statements of the witnesses which were recorded with regard to unregistered cases, that ground has been rejected by the learned Single Judge himself. It is, of course, true that after narrating the particulars of the criminal cases, the detaining authority has mentioned that the activities of the appellant were an obstacle to the public health and public order, but this bald observation cannot be taken to be decisive so as to arrive at the satisfaction that the activities of the petitioner were prejudicial to the public order or public health and that tempo of public life was disturbed. No observation made in any part of the judgement can be read in isolation and bereft the context. The judgement is to be read as a whole and even the observations which have been made by the Supreme Court in para 6 of the judgement are to be considered in light of the earlier observations made in para 5 where presence of credible material before the detaining authority has been insisted upon. Thus, litmus test to find out as to whether it is a case of breach of public order or breach of public health is concerned, credible material has to be there. In the case of K.S.Zala before the Supreme Court, the detaining authority had also relied upon the statements of the witnesses so as to show that violence resorted to by the petitioner in that case had disturbed the even tempo of public life and the material on record had shown that members of the public of those localities had to run away from there and to go inside their houses and to close their doors. No such fact situation has been mentioned in the present case and the ground with regard to the statements of the three witnesses has been rejected by the learned Single Judge himself and it has been held that there had been violation or infringement of the petitioner's right against such statements. In this view of the matter

whatsoever said by the three witnesses with regard to unregistered cases and with regard to the three incidents referred to hereinabove, it cannot be considered to be the material germane for the purpose of consideration of the threat to the public health and public order. Thus, the only material which remains is the registered criminal cases and that by itself cannot be said to be a material for the purpose of holding that the appellant's activities had become a threat to the public order and public health. Necessary material in this regard is totally wanting in the body of the detention order itself. In large number of cases, the Supreme Court has considered that involvement in bootlegging activities even if coupled with violence does not amount to threat to public order or public health. The mere mention of allegations unless they are supported by any material cannot be said to be material germane for the purpose of arriving at the satisfaction with regard to breach of public order or public health and we find that after giving particulars of criminal cases, the detaining authority by including certain allegations, not supported by any credible material has simply observed that the appellant's activities were an obstacle to the public health and public order. In this view of the matter keeping in view the observations made by the Supreme Court in the case of K.S.Zala v. State of Gujarat (supra) itself in paras 4 and 5, we do not find that it can be held to be a case of breach of public health and public order. Learned counsel for the appellant has also argued several other points before us, but we do not find it necessary to go into those grounds. It may be mentioned that it was not a case of breach of public order or public health and it was not argued before the learned Single Judge. Even if that be so, in such matters, the point which arises on the face of the facts of the case by the body of the order itself, which does not require further investigation of the facts, can certainly be allowed to be raised and we allow learned counsel for the appellant to raise this point and find that this point is not without substance. The impugned order passed by the learned single Judge upholding the detention order therefore, cannot be said to be in consonance with the settled position of law. The detention order deserves to be quashed and set

aside on this ground alone. We, therefore, do not go into other grounds which were raised on behalf of the appellants.

... ..."

In the aforesaid decision, the Division Bench held that the necessary material in this regard is totally wanting in the body of the detention order itself. Even in the instant case also, material on that ground is totally wanting in the body of the detention order. On the aforesaid ground, this petition is also required to be allowed in view of the aforesaid Division Bench judgment of this Court.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless she is required in connection with any other case. Rule is made absolute.

At this stage, Mr.Trivedi, learned Advocate for the petitioner-detenue, submitted that the petitioner is wanted in connection with the cases at serial Nos. 3 and 4 which are registered at the Olpad Police Station. He submitted that the petitioner is required to surrender in connection with the said case and, thereafter, she will have to be kept in judicial custody in view of the aforesaid cases. So far as the present cases are concerned, that has nothing to do with the said matter, and it is for the concerned Magistrate to consider whether any bail can be granted to the detenue and it is for the State to oppose such bail application if the State is of the opinion that the petitioner is repeating such type of cases regularly. The release of the petitioner from the preventive detention has nothing to do with the aforesaid two cases and the authority can act in accordance with law in connection with those two cases.

11th August, 2004 (P.B. Majmudar, J.)

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(apj)